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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,293	08/27/2001	Vieri Vanghi	4740-009	5129

24112 7590 08/11/2005

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EXAMINER
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SMITH, GREIGHTON H

ART UNIT	PAPER NUMBER
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2645

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/940,293

**Applicant(s)**

VANGHI, VIERI

**Examiner**

Creighton H. Smith

**Art Unit**

2645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 June '05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-70 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,5 and 13-19 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,4,6-12,20-39,48-54 and 64-70 is/are allowed.
- 6) ☒ Claim(s) 40,46,47,55 and 57 is/are rejected.
- 7) ☒ Claim(s) 41-45,56 and 58-63 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 40, 46, 47, 55, and 57 are rejected under 35 U.S.C. 102(e) as being anticipated by Scherzer et al U.S. patent Publication #20010031647.

Scherzer et al system in [0010] is for the optimization of the forward link (from BTS to mobile) by each mobile station monitoring a common pilot broadcast throughout the whole sector, and then each mobile unit sending back to the BTS the quality of the common pilot. Scherzer et al continues in [0010] by disclosing that the HDR base station may determine the particular mobile units currently in position that are most likely to be suitable for high data rate (HDR) transmission in the forward link. Those mobile stations reporting a strong pilot signal will be provided with the high data rate transmission while the remaining mobile units will be passed over. By this disclosure, Scherzer et al are controlling admission for the mobile unit's reception of HDR transmission by realizing that some mobile units will get the rate that they want and some will not get the rate they want based on the mobile units reporting back to base station the strength of the pilot received at the mobile unit. Applicant's disclosure on page 2 of Reverse Power Control channel power as a forward link channel transmitted to the access (mobile) terminals at a constant rate. So, Scherzer's [0010] meets this

limitation by receiving estimates (based on the strength of a pilot as received at a particular mobile station) of the forward link HDR transmission requirements, and then allocates that HDR to those mobile stations reporting the strongest pilot.

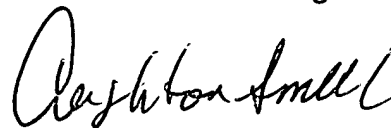
In [0011], Scherzer et al disclose that one or more mobile units maybe provided HDR transmission in the forward link while other ones of the mobile units in the same sector are provided no forward link data transmission.

Scherzer et al limits or controls call admission, or HDR transmission, based on congestion by disclosing in [0005] that cellular capacity is limited by interference and that an increase in transmission power will not be sufficient to increase system capacity. Applicant's recital of congestion indicators is equivalent to Scherzer et al disclosure of interference. In [0045], Scherzer et al controls downlink power through a balance of beam forming in an HDR system to minimize inter-cell interference (applicant's congestion indicators) and to increase capacity of sectors.

Claims 41-45, 56, 58-63 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1, 4, 6, 7-12, 20-39, 48-54, 64-70 allowed.

Any inquiry concerning this communication should be directed to Creighton H. Smith at telephone number 571/272-7546.

A handwritten signature in black ink, appearing to read "Creighton H. Smith", written in a cursive style.

30 July '05

Creighton H Smith  
Primary Examiner  
Art Unit 2645